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EXAMINER

SHAH, AMEE A

ART UNIT PAPER NUMBER

3625

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/662,398

Applicant(s)

HARRIS, WILLIAM F.

Examiner

Amea A. Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) 1-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-57 have been previously withdrawn from consideration; therefore only claims 58-76 are discussed in this action.

#### ***Response to Amendment***

Applicant's amendment, filed January 27, 2005, is acknowledged and entered.

#### ***Response to Arguments***

Applicant's arguments, see page 2, filed January 27, 2005, with respect to the drawings have been fully considered and are persuasive. The objection regarding the drawings has been withdrawn.

Applicant's arguments filed January 27, 2005, regarding the claims have been fully considered but they are not persuasive.

In response to applicant's argument that the functional recitations should not be given little patentable weight, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

In the instant case, the prior art (Rothman, U.S. Patent Application Publication 2002/0072984) discloses all of the structural components as submitted in the claims and discussed in the previous office action. Furthermore, the structural components in Rothman are capable of performing the intended uses as claimed. For example, in reference to claim 58, Rothman discloses a receiver component capable of receiving on behalf of a manufacturer requests to order a product from a customer and of receiving financial authorization from a distributor a request including a product code that identifies the product and a customer identification that identifies a customer and a financial authorization comprising an acknowledgment from the distributor verifying a customer account even though the request is received by the receiver component in a manner independent of the distributor (§§0042, 0066, 0067). Rothman also discloses a data storage medium capable of storing information for a plurality of products, including a customer price associated with each of the plurality of products (§0071). Rothman further discloses an order placement component capable of retrieving from the data storage medium information for the identified product and that uses the retrieved information to place an order from the manufacturer of the identified product (§§0072-0075). Rothman further discloses an order fulfillment component capable of completing a purchase of the product in accordance with the order placed by the order placement component including arrangement for shipping by the manufacturer and billing of the distributor (§0075). Rothman further discloses the limitations of claim 70 of a system comprising, in part, a commission component capable of determining a commission and assigning the commission to one of the plurality of agents based on at least one of the plurality of predetermined variables even though the request is received by the receiver component in a manner independent of the agents and

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even though the request is fulfilled in a manner independent of the agents (§§0045, 0080-0082).

Therefore, the reference Rothman meets all of the limitations recited in the claims, as discussed in the previous office action.

In response to Applicant's arguments that the Rothman publication does not teach or suggest a receiver component for receiving financial authorization from a distributor or an order fulfillment component for billing the distributor, nor does it teach or suggest an order fulfillment component that permits billing of the distributor (Remarks, pages 7-8), the examiner states that these limitations are functional recitations given little patentable weight, as discussed above. The prior art, Rothman, does in fact disclose a receiver component capable of receiving financial authorization from a distributor (Rothman, §§0042, 0066, and 0067), and an order fulfillment component capable of permitting billing of the distributor (Rothman, §0075), as discussed supra, below, and in the previous office action.

In response to Applicant's arguments that the Rothman publication does not teach or suggest that any distributor would receive a commission based upon this sale and fulfillment that were completed independent of the distributor as contemplated by independent Claim 70 (Remarks, page 8), the examiner states that this limitation is a functional recitation given little patentable weight, as discussed above. The prior art, Rothman, does in fact disclose a component capable of determining a commission and assigning the commission to one of the plurality of agents based on at least one of the plurality of predetermined variables even though the request is received by the receiver component in a manner independent of the agents and even though the request is fulfilled in a manner independent of the agents (§§0045, 0080-0082), as discussed supra, below, and in the previous office action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 58-76 are rejected under 35 U.S.C. 102(e)(1) as being anticipated by Rothman (U.S. Patent Application Publication 2002/0072984).**

Referring to claim 58. Rothman discloses a server system for generating an order for a product, comprising:

- a receiver component that receives (¶0066 – note that the receiver component is comprised in part by the transaction database), on behalf of a manufacturer (¶0042 and ¶0066 – note that the manufacturer is the seller), requests to order a product from a customer (¶0066) and for receiving financial authorization from a distributor (¶¶0066-0067 – note that the financial authorization is the financial account maintained which is accessible for charging), a request including a product code that identifies the product (¶0066) and a customer identification that identifies a customer (¶0066), and a financial authorization comprising an acknowledgment from the distributor verifying a customer account even though the request is received by the receiver component in a manner independent of the

distributor (§0066 - note that the acknowledgement is “a credit field for storing an indication of whether the transaction is an online credit transaction completed through the seller’s web site”) (*see also* Response to Arguments, *supra*);

- a data storage medium storing information for a plurality of products, including a customer price associated with each of the plurality of products (§0071 – note the medium comprised primarily of the inventory database) (*see also* Response to Arguments, *supra*);
- an order placement component (§§0072-0075 – note the component is the transaction process) that retrieves from the data storage medium information for the identified product (§0073) and that uses the retrieved information to place an order from the manufacturer of the identified product (§0075) (*see also* Response to Arguments, *supra*); and
- an order fulfillment component that completes a purchase of the product in accordance with the order placed by the order placement component including arrangement for shipping by the manufacturer and billing of the distributor (§0075) (*see also* Response to Arguments, *supra*).

Referring to claim 59. Rothman further discloses the server system of Claim 58, wherein the customer identification includes an indication of the distributor so as to identify the predetermined pricing function (§0045).

Referring to claim 60. Rothman further discloses the server system of Claim 58, wherein the customer identification includes a customer account number associated with the distributor (Figure 3 and ¶0066).

Referring to claim 61. Rothman further discloses the server system of Claim 60, wherein the receiver component is further for receiving an account number acknowledgment from the distributor associated with the customer account number so as to identify the predetermined pricing function (¶¶0071, 0079) (*see also* Response to Arguments, *supra*).

Referring to claim 62. Rothman further discloses the server system of Claim 58, wherein the data storage medium further includes pricing information associated with a plurality of distributors, and wherein the predetermined pricing function includes the distributor pricing information of the identified distributor in the customer price (¶0045).

Referring to claim 63. Rothman further discloses the server system of Claim 58, further comprising a commission component (¶0045) that determines a commission and assigns the commission to a manufacturer's representative, where the commission is based on the order, and where the manufacturer's representative is associated with the customer identification (¶¶0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 64. Rothman further discloses the server system of Claim 58, further comprising a commission component (¶0045) that determines a commission and assigns the

commission to a manufacturer's representative, where the commission is based on the order, and where the manufacturer's representative is associated with the product (§§0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 65. Rothman further discloses the server system of Claim 58, further comprising a commission component (§0045) that determines a commission and assigns the commission to a manufacturer's representative, where the commission is based on the order, and where the manufacturer's representative is associated with the customer identification and the product (§§0080-0082 – note that the transaction database includes the customer identification which can then be used by the manufacturer) (*see also* Response to Arguments, *supra*).

Referring to claim 66. Rothman further discloses the server system of Claim 58, wherein the data storage medium further comprises stored information associating a manufacturer's representative with a plurality of predetermined variables (§§0061-0063); and further comprising a commission component that determines a commission and assigns the commission to a manufacturer's representative based on at least one of the plurality of predetermined variables, where the commission is based on the customer price (§§0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 67. Rothman further discloses the server system of Claim 66, wherein the plurality of predetermined variables includes at least one of a territory, a distributor, a manufacturer, a commission percentage and the customer identification (§§0061-0063).

Referring to claim 68. Rothman further discloses the server system of Claim 58, wherein the receiver component is in communication via a public access communications network with a site displaying information for the product, and wherein the order is received via the public access network (Figure 1 and ¶0036).

Referring to claim 69. Rothman further discloses the server system of Claim 58, wherein the receiver component is in communication via a public access communications network with a manufacturer-specific site displaying information for the product, where the manufacturer-specific site primarily displays only products of a single manufacturer, and wherein the order is received via the public access network (¶0036).

Referring to claim 70. Rothman discloses a server system for generating an order for a product, comprising:

- a receiver component that receives, on behalf of a manufacturer, requests to order a product from a customer, a request including a product code that identifies the product and a customer identification that identifies a customer (¶0066) (*see also* Response to Arguments, *supra*);
- a data storage medium storing information for a plurality of products and storing information for a plurality of agents associated with the product, where the stored product information includes a customer price associated with the product, where the stored agent information includes at least one predetermined variable

associated with each of the plurality of agents (Figure 15 and ¶¶0061-0065) (*see also* Response to Arguments, *supra*); and

- a commission component that determines a commission and assigns the commission to one of the plurality of agents based on at least one of the plurality of predetermined variables even though the request is received by the receiver component in a manner independent of the agents and even though the request is fulfilled in a manner independent of the agents (¶¶0045, 0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 71. Rothman further discloses the server system of Claim 70, wherein the predetermined variable includes at least one of a territory, a distributor, a manufacturer, a commission percentage and the customer identification (¶¶0045, 0080-0082).

Referring to claim 72. Rothman further discloses the server system of Claim 70, wherein the data storage medium further comprises a commission percentage associated with each of the plurality of products, wherein the commission percentage is a rate for calculating the commission, and wherein the commission is based on the commission percentage (¶¶0045, 0080-0082).

Referring to claim 73. Rothman further discloses the server system of Claim 70, wherein the receiver component further receives a financial authorization that comprises an

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acknowledgment of the validity of the customer identification from a distributor of the product (Figure 12 and ¶0066) (*see also* Response to Arguments, *supra*).

Referring to claim 74. Rothman further discloses the server system of Claim 70, further comprising

- an order placement component (Figure 12 and ¶¶0072-0075) that retrieves from the data storage medium information for the identified product and that uses the retrieved information to place an order for the identified customer for the identified products (*see also* Response to Arguments, *supra*); and
- an order fulfillment component that completes a purchase of the product in accordance with the order placed by the order placement component (¶0075) (*see also* Response to Arguments, *supra*).

Referring to claim 75. Rothman further discloses the server system of Claim 70, wherein the receiver component is in communication via a public access communications network with a site displaying information for the product, and wherein the order is received via the public access network (Figure 1 and ¶0036).

Referring to claim 76. Rothman further discloses the server system of Claim 70, wherein the receiver component is in communication via a public access communications network with a manufacturer-specific site displaying information for the product, where the manufacturer-

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specific site primarily displays only products of a single manufacturer, and wherein the order is received via the public access network (§0036).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: (1) Rive et al., Patent No. 6,618,706 B1, disclosing a system, method and apparatus for receiving customer orders from or on behalf of sellers through direct or indirect channels and distributing compensation accordingly (*see* Abstract and Figures 1 and 6).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAS

May 10, 2005

  
WYNN W. COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600